

Scope of Work

Deliverables:

1. Payment of Rebate

Monthly rebates will be submitted through a wire transfer to the Indiana Treasurer of State Office.

Payment of rebates will be made on all contract brand infant formula purchased while the contract is in effect, even though the contract may be expired at the time of billing and/or payment due date. If payment is not provided within thirty (30) days from the Contractor's receipt of the invoice, then the Contractor shall pay ISDH, in addition to the amount due, interest at the rate of one (1) percent per month, or the portion thereof on the unpaid balance from the date on the invoice until such time as payment is made to ISDH.

The Contractor must notify ISDH of any disputes or errors in the invoice within sixty (60) days of the invoice sent date. If the Contractor misses the deadline, any disputes or over-billing errors are to be waived. All disputes must be settled by the close-out of the federal fiscal year in which the dispute occurred. The Contractor may not withhold any rebate payment under any circumstances. Upon resolution of the dispute, ISDH may disburse funds to the appropriate party.

2. Technical Specifications

The rebate to be paid on all contract infant formulas (excluding the primary contract infant formula), yields the same percentage discount as the corresponding physical form of the primary contract infant formula for which bids were solicited. That is, the discount established at the beginning of the contract (by physical form), is used to calculate the rebate for infant formula (new and existing) added to the contract subsequent to the initiation of the contract (§246.16a(c)(5)(i – iii)).

The Indiana WIC Program intends for the Respondent to pay rebates only on containers of infant formula actually purchased. Payment to ISDH shall be based on the number of checks redeemed during a given month for the Contractor's brands printed on the checks, multiplied by the number of containers designated on each check. Please see Attachment E: Infant Formula Rebate Invoice Report.

The Contractor shall reimburse ISDH for all checks issued during the last month of the contract even though it may take up to eighty to ninety (80-90) days for the check to appear on the report.

Participant and infant formula usage does not reflect the actual issuance and redemption that will occur under the contract. The amount of formula purchased will fluctuate with the availability of federal funds and other factors. ISDH reserves the right to evaluate its formula issuance policy and accordingly adjust. ISDH does not provide a guarantee of the quantity, type, or physical forms of formula that will be used under the contract.

The rebate for infant formula added to contract after the start date (new and existing) is calculated using the wholesale price of the formula at the time the formula is approved for issuance by the state agency based on the percent discount of the primary contract formula by physical form. (§246.16a(c)(6))

3. Indiana WIC Program Options

New and Existing Infant Formula

ISDH reserves the right to approve or reject any new and/or improved iron-fortified infant formula for issuance in the Indiana WIC Program. Any new infant formula introduced will be subject to a rebate determined by the Contractor prior to the signing of the contract.

If a new container size is introduced during the contract period and is approved by the Indiana WIC Program, then the Contractor will pay a rebate that yields the same percent discount for the new container size.

Primary Contract Infant Formula

If the Contractor is unable to supply or discontinues production of the primary contract infant formula included in the Contractor's original Proposal and accepted by the contract, then the Contractor will pay a rebate that yields the same percentage discount for the substitute formula it issues, provided that the new infant formula meets the United States Food and Drug Administration (FDA) guidelines. (GAO Report 06-380, April 2006).

Except for the primary contract infant formula, the Indiana WIC Program provides no guarantee of the quantity, type, or physical forms that will be used under a new contract. The Primary Contract Infant Formula will be the formula of first choice for issuance to infants with all other formula issued as an alternative to the primary contract infant formula (§246.16a(c)(7)).

Adjustments

During the life of the contract, including the renewal(s), the Contractor shall provide to the Indiana WIC Program, for any manufacturer increase or decrease in the lowest national wholesale full truckload price per unit, a cent-for-cent increase or decrease in the rebate amount to commence on the first day of the month in which the increase or decrease has occurred and to apply to all contract brand infant formula containers redeemed in the month of the increase. The Contractor must notify the Indiana WIC Program in writing of any price increase no later than the retailer's notification date.

Other

The Contractor shall provide advance payment to ISDH upon written request by the Indiana WIC Program Director. The Director may make up to two (2) such advance payment requests per contract year. The contractor shall provide the advance payment within thirty (30) calendar days of infant formula containers purchased by participants in the preceding month report multiplied by the rebate amount. When the actual number of units purchased during the month for which advance payment is requested is known, WIC Services shall adjust subsequent billings accordingly. ISDH will provide a one (1) percent (%) discount when it asks for an advance.

The contract will remain valid providing the Contractor continues to supply all of the forms specified in the RFP document.

If the Contractor desires to artistically change the appearance of the infant formula container (i.e., logo, color, design, shape), change the unit size, or reformulate an existing formula during the Contract period, these anticipated changes shall be reported to the Indiana WIC Program three (3) months prior to implementation.

Reasonable access to the Contractor's records shall be provided to ISDH upon request.

The Indiana WIC Program and the Contractor shall meet/conference call as often as necessary to review the progress and performance of the contract. During these meetings/conference calls, any concerns regarding billing procedures should be addressed.

4. Responsibilities for the Indiana WIC Program

The Indiana WIC Program shall print infant formula Indiana WIC checks that designate only the Contractor's brands of Indiana WIC eligible infant formulas.

While this contract is in effect, the Indiana WIC Program will not issue non-contract brand infant formula to its participants.

ISDH shall provide monthly, to the Contractor, a report and invoice specifying the number of containers of infant formula redeemed by the Indiana WIC Program. All information provided to the Contractor shall exclude participant and vendor identifying information.

To accommodate disaster conditions such as loss of refrigeration or unsafe drinking water, the Indiana WIC Program may allow WIC clinics to modify WIC food package components and issue ready-to-feed infant formula.

The Indiana WIC Program allows infants a monthly quantity of infant formula that does not exceed the maximum ounces allowed for each type and form of infant formula issued, as specified in §246.10(c)(1)(2).

If the Contractor is unable to supply a specific form of the contract brand infant formula, then the Indiana WIC Program will substitute, when appropriate, alternate forms (i.e., powder, concentrate, RTU, RTF) of the contract brand infant formula. Some cases may not allow form substitution. Examples are the following: premature infants or infants with immune problems; questionable water supply; or limited formula preparation skills of infant's caretaker.

The Contractor will have access to redacted food instruments for audit purposes.

The Indiana WIC Program will provide supporting information for the rebate invoice on a monthly basis. Food instrument number, food package identifier, infant age group, product name, number of units authorized to purchase, effective date of food instrument, redemption date of food instrument, redeemed amount, and pseudo vendor identification number will be provided.

5. Responsibilities of the Contractor

The contractor shall make available all containers of iron-fortified milk-based and soy-based liquid concentrate, powdered, and ready-to-use (RTU) or ready-to-feed (RTF) infant formula.

Infant formula as defined above shall be complete; i.e., not requiring the addition of any ingredients other than water prior to being served in a liquid state.

The Contractor shall supply a sufficient amount of contract brand infant formula, as defined above, to all wholesalers and all Indiana WIC Program vendors to meet 100% of the Indiana WIC participant infant formula need. No later than July 1, 2015, the Contractor must provide documentation to the Indiana WIC Program that all wholesalers and all Indiana WIC Program vendors were contacted and provided information about the contract brand infant formula, and ensured sufficient supply of infant formula has been provided, and will continue to be provided throughout the duration of the contract and renewals.

The Contractor shall rebate ISDH on a per container basis. (Refer to the Payment of Rebate and Technical Specifications.)

The Contractor may not have access to any records identifying participants by name and/or address (§246.26(d)) or any information about a vendor that individually identified the vendor, except for the vendor's name, address, telephone number, Web site/e-mail address, store type, and authorization status (§ 246.26(e)).

The Contractor must adhere to FNS Instruction 800-2, dtd 6/21/92 & GAO 06-282, Feb. 2006:

“Use of WIC Service Marks: Manufacturer acknowledges that the WIC Acronym and the WIC Logo are service marks owned by the Department of Agriculture (USDA), and that all rights therein and goodwill pertaining thereto belong exclusively to USDA.

Manufacturer shall not use these service marks in any manner on its goods or their containers or packaging or on tags or labels affixed thereto. Manufacturer also shall not use the WIC Logo in advertising or other promotional materials (collectively: “advertising”).

Manufacturer shall not use the WIC Acronym in advertising in any manner that is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of Manufacturer with the WIC Program, or as to the sponsorship or approval of Regional Directors.

Manufacturer's goods, services, advertising, or commercial activities, including nutritional message(s), by the WIC Program, USDA, or the State agency.

Manufacturer shall include the following statement with any use of the WIC Acronym in advertising: “WIC is a registered service mark of the U.S. Department of Agriculture for USDA's Special Supplemental Nutrition Program for Women, Infants and Children.”

In the event of a disaster impacting Indiana WIC participants, the Contractor shall make every effort to ensure that Indiana WIC vendors in the impacted areas are supplied with adequate amount of ready-to-feed infant formula.

The Contractor is only responsible for rebates for checks with a “first use by date” within the term of the contract.

The Contractor must subcontract with another manufacturer to supply soy-based infant formula if the Respondent does not produce it.

Below is an example of a contract price sheet.

Nestle Gerber Products Infant Formula Price Sheet for Indiana
Effective July 1, 2014

Product Name & Net Contents	Physical Form	Case Pack	Reconstituted Fluid Ounce (fl oz)	Universal Product Code	Lowest National Wholesale Price per Case	Lowest National Wholesale Price per Container	Rebate per Container	Net Price per Container	Percentage Discount	Net Price per fl oz
GERBER GOOD START GENTLE 12.7 oz Submitted Bid for Primary	Powder	6	90.00	0 50000 21667 3	\$73.3800	\$11.3900	\$10.30440	\$1.0856	90.47%	\$0.0121
GERBER GOOD START GENTLE 12.7 oz October 2011 Price Increase	Powder	6	90.00	0 50000 21667 3	\$73.3800	\$12.2300	\$11.14440	\$1.0856	91.12%	\$0.0121
GERBER GOOD START Gentle 12.7 oz November 2011 Price Increase	Powder	6	90.00	0 50000 21667 3	\$79.1400	\$13.1900	\$12.10440	\$1.0856	91.77%	\$0.0121
GERBER GOOD START Gentle 12.7 oz January 2013 Price Increase	Powder	6	90.00	0 50000 21667 3	\$84.0000	\$14.000	\$12.91440	\$1.0856	92.25%	\$0.0121
GERBER GOOD START Gentle 12.7 oz July 1, 2014 Price Increase	Powder	6	90.00	0 50000 21667 3	\$88.8000	\$14.8000	\$13.7144	\$1.0856	92.66%	\$0.0121
GERBER GOOD START GENTLE 13 fl oz Submitted Bid for Primary Sept 2011Discontinued	Concentrate	12	26.00	0 50000 21669 7	\$47.1600	\$3.9300	\$3.65490	\$0.2751	93.10%	\$0.0106
GERBER GOOD START GENTLE 12.1 fl oz Oct 2011Replacement	Concentrate	12	24.20	0 50000 21671 0	\$47.1600	\$3.9300	\$3.67390	\$0.2561	93.48%	\$0.0106
GERBER GOOD START GENTLE 12.1 fl oz November 2011 Price Increase	Concentrate	12	24.20	0 50000 21671 0	\$49.9200	\$4.1600	\$3.90390	\$0.2561	93.84%	\$0.0106
GERBER GOOD START GENTLE 12.1 fl oz January 2013 Price Increase	Concentrate	12	24.20	0 50000 21671 0	\$51.60000	\$4.3000	\$4.04390	\$0.2561	94.04%	\$0.0106
GERBER GOOD START GENTLE 12.1 fl oz	Concentrate	12	24.20	0 50000 21671 0	\$53.1600	\$4.4300	\$4.1739	\$0.2561	94.22%	\$0.0106

July ,1 2014 Price Increase										
GERBER GOOD START GENTLE 32 fl oz Submitted Bid for Primary Sept 2011 Discontinued	RTF	6	32.00	0 50000 21670 3	\$34.6200	\$5.7700	\$2.59650	\$3.1735	45.00%	\$0.0992
GERBER GOOD START GENTLE 33.8 fl oz October 2011 Replacement	RTF	4	33.80	0 50000 56871 0	\$23.0800	\$5.7700	\$2.41800	\$3.3520	41.91%	\$0.0992
GERBER GOOD START GENTLE 33.8 fl oz January 2013 Price Increase	RTF	4	33.80	0 50000 56871 0	\$23.6000	\$5.9000	\$2.54800	\$3.3520	43.19%	\$0.0992
GERBER GOOD START GENTLE 33.8 fl oz or 4x8.45 oz. July 1, 2014 Price Increase	RTF	4	33.80	0 50000 56871 0	\$24.9200	\$6.2300	\$2.8780	\$3.3520	46.20%	\$0.0992
GERBER GOOD START PROTECT 12.4 oz Secondary Included in Bid	Powder	6	90.00	0 50000 62550 5	\$73.3800	\$12.2300	\$11.1444	\$1.0856	91.12%	\$0.0121
GERBER GOOD START PROTECT 12.4 oz November Price Increase	Powder	6	90.00	0 50000 62550 5	\$79.1400	\$13.1900	\$12.10440	\$1.0856	91.77%	\$0.0121
GERBER GOOD START PROTECT 12.4 oz January 2013 Price Increase	Powder	6	90.00	0 50000 62550 5	84.0000	\$14.0000	\$12.91440	\$1.0856	92.25%	\$0.0121
Gerber Good Start Gentle for Supplementing 12.4oz March 2014 Name Change for Protect State is removing item beginning 1/6/2014 issuance.	Powder	6	90.00	0 50000 62550 5	84.0000	\$14.0000	\$12.91440	\$1.0856	92.25%	\$0.0121
GERBER GOOD START SOY 12.9 oz Secondary Included in Bid	Powder	6	91.00	0 50000 03530 4	\$79.1400	\$13.1900	\$12.0192	\$1.1708	91.12%	\$0.0129
GERBER GOOD START SOY 12.9 oz November 2011 Price Increase	Powder	6	91.00	0 50000 03530 4	\$81.5400	\$13.5900	\$12.41920	\$1.1708	91.38%	\$0.0129
GERBER GOOD START SOY 12.9 oz January 2013 Price Increase	Powder	6	91.00	0 50000 03530 4	\$86.9400	\$14.4900	\$13.31920	\$1.1708	91.92%	\$0.0129
GERBER GOOD START	Powder	6	91.00	0 50000 03530 4	\$90.6000	\$15.1000	\$13.9292	\$1.1708	92.25%	\$0.0129

SOY 12.9 oz July 1, 2014 Price Increase										
GERBER GOOD START SOY 13 fl oz Secondary Included in Bid Sept 2011 Discontinued	Concentrate	12	26.00	0 50000 3457 4	\$48.1200	\$4.0100	\$3.7296	\$0.2804	93.007%	\$0.0108
GERBER GOOD START SOY 12.1 fl oz October 2011 Replacement	Concentrate	12	24.20	0 50000 03458 1	\$48.1200	\$4.0100	\$3.7487	\$0.2613	93.48%	\$0.0108
GERBER GOOD START SOY 12.1 fl oz November 2011 Price Increase	Concentrate	12	24.20	0 50000 03458 1	\$49.9200	\$4.1600	\$3.89870	\$0.2613	93.72%	\$0.0108
GERBER GOOD START SOY 12.1 fl oz January 2013 Price Increase	Concentrate	12	24.20	0 50000 03458 1	\$51.6000	\$4.3000	\$4.03870	\$0.2613	93.92%	\$0.0108
GERBER GOOD START SOY 12.1 fl oz July 1, 2014 Price Increase	Concentrate	12	24.20	0 50000 03458 1	\$53.1600	\$4.4300	\$4.1687	\$0.2613	94.10%	\$0.0108
GERBER GOOD START SOY 32 fl oz Secondary Included in Bid Sept 2011 Discontinued	RTF	6	32.00	0 50000 03459 8	\$35.4000	\$5.9000	\$2.6550	\$3.245	45.00%	\$0.1014
GERBER GOOD START SOY 33.8 fl oz or 4 x 8.45 oz. October 2011 Replacement	RTF	4	33.80	0 50000 35355 2	\$24.9200	\$6.2300	\$2.8025	\$3.4275	44.98%	\$0.0101 4
GERBER GOOD START GENTLE NURSER 3 fl oz Secondary Included in Bid	RTF	6 x 8	144.00	0 50000 11123 7	\$47.88	\$15.9600	\$7.1820	\$8.7780	45.00%	\$0.0610
GERBER GOOD START SOY NURSER 3 fl oz Secondary Included in Bid	RTF	6 x 8	144.00	0 50000 03534 2	\$52.68	\$17.56	\$7.9020	\$9.6580	45.00%	\$0.0671
GERBER GOOD START 2 SOY 24 oz Secondary Included in Bid	Powder	4	170.00	0 50000 62270 2	\$70.1600	\$17.5400	\$15.9831	\$1.5569	91.12%	\$0.0092
GERBER GRADUATE (formerly GOOD START 2) SOY 24 oz November 2011 Price Increase	Powder	4	170.00	0 50000 62270 2	\$77.1600	\$19.2900	\$17.73310	\$1.5569	91.93%	\$0.0092

Discontinued March 2014										
GERBER GOOD START 2 GENTLE 22 oz Secondary Included in Bid	Powder	3	154.00	0 50000 11168 8	\$52.6200	\$17.5400	\$15.9831	\$1.5569	91.12%	\$0.0101
GERBER GRADUATE (formerly GOOD START 2) Gentle 22 oz November 2011 Price Increase	Powder	3	154.00	0 50000 11168 8	\$57.8700	\$19.2900	\$17.73310	\$1.5569	91.93%	\$0.0101
GERBER GOOD START 2 PROTECT 22 oz Secondary Included in Bid	Powder	3	157.00	0 50000 11169 5	\$52.6200	\$17.5400	\$15.9831	\$1.5569	91.12%	\$0.0099
GERBER GRADUATE (formerly GOOD START 2) Protect 22 oz November 2011 Price Increase Discontinued March 2014	Powder	3	157.00	0 50000 11169 5	\$57.8700	\$19.2900	\$17.73310	\$1.5569	91.93%	\$0.0099
GERBER GOOD START Soothe 12.4 oz Added August 2012	Powder	6	90.00	0 50000 62400 3	\$81.5400	\$13.5900	\$12.4715	\$1.1185	91.76%	\$0.0124
GERBER GOOD START Soothe 12.4 oz January 2013 Price Increase	Powder	6	90.00	0 50000 62400 3	\$86.9400	\$14.4900	\$13.37150	\$1.1185	92.28%	\$0.0124
GERBER GOOD START Soothe 12.4 oz July 1, 2014 Price Increase	Powder	6	90.00	0 50000 62400 3	\$90.6000	\$15.1000	\$13.9815	\$1.1185	92.59%	\$0.0124

Methodology Used by Nestle to Establish Partial Redemption Rates

The Indiana WIC Program intends for the Respondent to pay rebates only on containers of infant formula actually purchased with checks. Payment to ISDH shall be based on the number of checks redeemed during a given month for the Contractor's brands printed on the checks, multiplied by the number of containers designated on each check. Please see Attachment E: Infant Formula Rebate Invoice Report.

In order to adjust for checks that may have been redeemed for less than the full number of containers designated on them (partially – redeemed food instruments), the Indiana WIC Program will make an adjustment to each monthly invoice. The methodology used to adjust for partially - redeemed food instruments is currently determined by the Program and Contractor.

The Program subtracts a percentage for partial redemption from the issue month, thirty-day month, and close-out month listed in the total rebate invoice report that is provided monthly to the Contractor. The partial redemption factor is developed by the Contractor and is reviewed semiannually to include invoices from October through March and then again for April through September. Once the partial redemption factor is reset, the Program balances with the Contractor by paying the difference owed or receiving payment from the Contractor. This is done through adjustments made to the invoice report.

The process and calculation used to determine the partial redemption factor is as follows: The Program provides containers redeemed and unadjusted dollars in the monthly invoice rebate report. The Contractor provides the average vendor price which is often 90% of the Nielsen price. The Contractor completes the following equation for each food instrument: Unadjusted dollars is divided by the average vendor price per container to equal calculated containers redeemed. Calculated containers redeemed is rounded to the nearest whole container. Authorized containers redeemed minus calculated containers redeemed is equal to the number of partial containers billed. The number of partial containers billed is multiplied by the contract rebate price per container to equal dollars of partial containers billed.

The dollars of partial containers billed is totaled for all food instruments and divided by the total unadjusted dollars to equal the partial redemption factor. This process is repeated for six months. And, the average partial redemption factor is determined for the six month time period. The current partial redemption factor is 0.20%.

The Indiana WIC Program is working on a new system to capture the average retail price and anticipates incorporating the new methodology into the Contract once it has been tested and approved.